

1
2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 ERIC D. MONTOYA,

7 Plaintiff,

8 v.

9 K. MATTICE-HARRIS, *et al.*,

10 Defendants.

Case No. 3:22-cv-00558-ART-CSD
ORDER ADOPTING REPORT AND
RECOMMENDATION (ECF NO. 31)
AND DENYING MOTION TO AMEND
COMPLAINT (ECF NO. 29)

11 *Pro se* Plaintiff Eric D. Montoya, an inmate in the Northern Nevada
12 Correctional Center, brings this action under 42 U.S.C. § 1983 against
13 Defendants K. Mattice-Harris, Borie, Hartman, Megan, Hughes, Long-Smith,
14 Henley, and A. Adams, alleging (1) he was placed in administrative segregation
15 for eight months without review, in violation of his Fourteenth Amendment due
16 process rights; (2) his medical information was disclosed without his consent, in
17 violation of his Fourteenth Amendment privacy rights; (3) he did not receive
18 medical treatment following a seizure, in violation of his Eighth Amendment right
19 to be free from cruel and unusual punishment. Before the Court is the Report
20 and Recommendation (“R&R”) of United States Magistrate Judge Craig S. Denney
21 (ECF No. 31), recommending denial of Mr. Montoya’s Motion to Amend
22 Complaint (ECF No. 29) because the proposed complaint is incomplete on its
23 face and amendment would be futile. Mr. Montoya had until October 9, 2023 to
24 file an objection to Judge Denney’s R&R. (ECF No. 31 at 6.) To date, no objection
25 has been filed. For this reason, and as explained below, the Court adopts the
26 R&R and denies Mr. Montoya’s Motion to Amend Complaint.

27 The Court “may accept, reject, or modify, in whole or in part, the findings
28 or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where

1 a party fails to object to a magistrate judge’s recommendation, the Court is not
2 required to conduct “any review at all . . . of any issue that is not the subject of
3 an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v.*
4 *Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the
5 magistrate judges’ findings and recommendations is required if, but *only* if, one
6 or both parties file objections to the findings and recommendations.”) (emphasis
7 in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that
8 the Court “need only satisfy itself that there is no clear error on the face of the
9 record in order to accept the recommendation.”).

10 Because there is no objection, the Court need not conduct de novo review
11 and is satisfied Judge Denney did not clearly err. Here, Judge Denney
12 recommends denial of Mr. Montoya’s Motion because the proposed amended
13 complaint is incomplete on its face and because amendment would be futile in
14 light of the fact that Mr. Montoya seeks to add parties against whom he has failed
15 to state a colorable claim.

16 Once a Plaintiff has missed the 21-day window for amending his
17 complaint, as Mr. Montoya has here, he may generally only amend his complaint
18 with the Court’s permission. Fed. R. Civ. P. § 15(a). However, the Court will not
19 give leave to amend where amendment: “(1) prejudices the opposing party; (2) is
20 sought in bad faith; (3) produces an undue delay in litigation; or (4) is futile.”
21 *Amerisource Bergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir.
22 2006) (citation omitted).

23 Judge Denney found that Mr. Montoya’s proposed amended complaint was
24 incomplete on its face because it only brought claims against three new
25 defendants—Dzurenda, Whitmer, and Childress-Brietenbach—and failed to
26 reallege most of the facts, claims, and defendants in Mr. Montoya’s original
27 complaint. (ECF No. 31 at 3.)
28

1 Further, Judge Denney found that, even if the claim were complete on its
2 face, amendment would be futile since Mr. Montoya fails to allege facts sufficient
3 to sustain claims against the three proposed new defendants. (*Id.* at 5.)
4 Specifically, the proposed amended complaint vaguely alleges that the proposed
5 new defendants, Dzurenda, Whitmer, and Childress-Brietenbach, were “aware”
6 of Mr. Montoya’s ad-seg status but does not meaningfully describe or support
7 that awareness. (See ECF No. 29 at 3-9.) This is not enough to establish liability
8 under 42 U.S.C. § 1983.

9 Having reviewed the R&R and the record in this case, the Court is satisfied
10 that Judge Denney did not clearly err and adopts the R&R in full.

11 It is therefore ordered that Judge Denney’s Report and Recommendation
12 (ECF No. 31) is accepted and adopted in full.

13 It is further ordered that Mr. Montoya’s Motion to Amend Complaint (ECF
14 No. 29) is denied.

15 Dated this 20th Day of December 2023.

16
17 

18 ANNE R. TRAUM
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28